

Decision 01-04-029 April 19, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Own Motion into Competition For Local Exchange
Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's
Own Motion into Competition For Local Exchange
Service.

Investigation 95-04-044
(Filed April 26, 1995)

O P I N I O N

By this decision, we grant in part the Petition for Modification of Decision (D.) 00-07-022 (Decision) which was filed by NeuStar, Inc. (NeuStar) to the extent set forth below.

Background

In D.00-07-022, the Commission adopted cost recovery principles to apply to all state-mandated number pooling trials, including those previously scheduled for the 310, 415, 714, and 909 numbering plan areas (NPAs). The principles adopted in the decision require that the Pooling Agreement,¹ executed between NeuStar and the West Coast Portability Services, Limited Liability Corporation (LLC), be modified to require all carriers in the 310 NPA to bear a pro rata share of the contract payments due to NeuStar for the pooling trial. The pro rata share also must be based upon each carrier's proportionate share of assigned numbers in service for the 310 NPA based upon the

¹ Agreement for Interim Number Pooling Administration dated November 18, 2000 by and between the West Coast Portability Services, LLC, and Lockheed Martin IMS (now NeuStar, Inc.).

utilization data underlying the “Report on the 310 Area Code.”² A similar billing approach must be applied to all subsequent state-mandated pooling trials. Additionally, the decision authorizes NeuStar to bill each carrier providing service in each of the NPAs subject to pooling for its share of contract costs in proportion with its percentage of assigned numbers in service for the NPA. NeuStar must use the number utilization data for each NPA as previously ordered by the Commission to compute each carrier’s share of the contract costs.³ The decision also states that pooling participants that have previously been billed by NeuStar for the entirety of the shared industry costs shall receive a billing credit equal to the difference between the amount the carrier was previously billed and the revised amount due based upon the carrier’s pro rata share of assigned numbers in service.⁴

On August 21, 2000, NeuStar, in its capacity as the interim Pooling Administrator (PA) for California NPA codes, filed a petition for modification or clarification of certain instructions directed to NeuStar regarding pooling cost recovery as set forth in D.00-07-022.

NeuStar seeks clarification or modification of the following issues: (1) how NeuStar personnel, employed in the capacity of PA, can access confidential carrier utilization information that is currently restricted to personnel employed in the capacity of number utilization consultant; (2) whether each carrier’s proportionate share of contract costs excludes the current “Direct Fees” that are not billed proportionately, but that are billed directly to service providers; (3) whether pooling participants billed by NeuStar for the entirety of the shared industry costs may receive credit equal to the difference between the amount the carrier was billed and the revised payment based upon

² Decision at 13-14.

³ Decision at 14.

⁴ *Id.*

the carrier's pro rata share; and (4) whether any credit may be applied to monies subsequently collected pursuant to D.00-07-022.

WorldCom filed a response to the NeuStar Petition for Modification on September 19, 2000. No other party filed a response. WorldCom takes issue with NeuStar's position concerning the treatment of Direct Fees charged to carriers. In other respects, WorldCom does not contest NeuStar's Petition.

Disclosure of Confidential Data

Party's Position

Pursuant to an agreement between NeuStar and the State of California (Utilization Agreement) NeuStar collects and analyzes carrier utilization information and reports the results to the Commission. The Utilization Agreement prohibits NeuStar personnel from disclosing the confidential utilization information to any third party, including other NeuStar personnel outside of those working on data collection pursuant to the Utilization Agreement, without the permission of the Commission. Accordingly, NeuStar requests that the Commission modify the decision to authorize NeuStar to disclose the confidential carrier utilization information only to NeuStar PA personnel that require the information to carry out the directives of the D.00-07-022. This modification is requested in order to ensure that the pro-rated carrier billing adjustments can be made by the PA personnel based on number utilization data as prescribed by D.00-07-052.

Discussion

The modification in D.00-07-052 sought by NeuStar is premised on the PA's need to access each carrier's number utilization data in order to make the pro rata calculations of billings to individual carriers based upon numbers assigned to customers. Since the carrier-specific number utilization data is confidential, a separate Commission order would be needed to provide the PA with access to such data.

Instead of ordering release of confidential data as proposed by NeuStar, however, we conclude that a preferable solution is to modify the numerical formula for the pro rata calculation to avoid the need for confidential data. We conclude that a

reasonable and competitively neutral allocation of number pooling costs can be accomplished by basing the pro ration on total blocks of numbers held by each carrier. By charging for number pooling costs in direct proportion to the share of thousand-number blocks that carriers hold, no carrier will be placed at a competitive disadvantage by bearing a disproportionate share of pooling costs.

Pro ration of billing based on total thousand number blocks held by carriers (rather than numbers actually utilized by customers) will avoid the need to divulge confidential carrier-specific utilization data. Unlike actual quantities of numbers utilized, the total of number blocks assigned to each carrier is not confidential, but is publicly available information. Thus, NeuStar can determine each carrier's NXX holdings, and determine each carrier's pro rata share of pooling costs without access to confidential carrier-specific data.

We have reviewed the comments on the draft decision filed by parties objecting to the use of thousand-number blocks as a cost allocation base. Certain parties claim that such an approach is anti-competitive, assigning a disproportionate share of costs to CLECs and to carriers that cannot currently participate in thousand-block number pooling.

We find parties' arguments unpersuasive, and decline to revise the allocation base proposed in the draft decision. We recognize that ILECs typically experience higher utilization rates per thousand-number block than do new entrants. As a result, ILECs tend to generate greater revenue per thousand-number block than does a new entrant using only a small percentage of numbers within a thousand-number block. But such an outcome is not unique to numbering resources, nor does it necessarily indicate unfair competition. Such differences may simply reflect different economies of scale. For example, CLECs typically pay for unbundled network elements (UNEs) based on the incremental costs of the incumbent carrier, irrespective of the size of the CLEC. It is not anti-competitive merely because CLECs with fewer customers must pay the same UNE prices as larger carriers with more customers. Thus, while different carriers pay

similar prices for a given resource, carriers with a larger customer base can spread fixed costs over a greater revenue base. Firms cannot pay less for a commodity, however, merely because they have fewer customers to provide cost recovery.

Similarly, thousand-number blocks represent a commodity that carriers require to offer service. Parties' objections to the use of thousand-number blocks as a cost allocation base presume that smaller carriers with low number utilization rate should not have to bear the same share of costs for a given thousand-number block as larger carriers with higher utilization rates. We disagree with such a presumption. Irrespective of how much revenue a carrier generates from a given number block, the draw down of each thousand-number block from the pool still affects other carriers in the same manner. Whenever a carrier obtains a thousand-number block-- whether an ILEC or a CLEC--it is placing the same drain on numbering resources within an NPA. Other carriers forego access to that thousand-number block irrespective of whether it is assigned to an ILEC or a CLEC, and irrespective of the particular utilization rate involved. From the perspective of remaining numbering resources available to other carriers, differences in utilization rates between carriers are irrelevant.

By allocating pooling costs based upon thousand-number blocks, each carrier bears an equivalent share of costs in direct proportion to the resources they have withdrawn from the system. By allocating costs based on the full thousand-number block irrespective of specific utilization rates, there is a full accounting for each full block of numbering resources held by each carrier. Whether the numbers are held in a carrier's inventory or assigned to a customer, those numbers are still a commodity within the control of that carrier. Even if current utilization is low, the thousand-number block is still available to the carrier to meet ongoing customer growth. It is therefore consistent with the competitively neutral standards of the FCC for a cost recovery mechanism to hold carriers financially responsible for all of the numbering resources within their control, whether currently utilized or not.

Similarly, it promotes equitable sharing for costs to be assigned in the same manner to those carriers that are not pooling participants. We recognize that non-pooling participants are not able to donate thousand-number blocks to the pool that would permit them to reduce the share of pooling costs they would otherwise be assigned. On the other hand, carriers that do not participate in a number pool place a disproportionately greater burden on scarce numbering resources by requiring a less efficient means of allocating numbers. By assigning pooling costs to non-pooling participants based upon their full number blocks, they are assessed a prorata share of pooling costs directly based on the numbering resources that they have drawn from the system in the same manner as other carriers. Such an outcome is not anti-competitive, but instead applies a uniform allocation base, treating all carriers in like manner. The fact that non-pooling carriers have drawn numbering resources less efficiently thereby is reflected in the share of pooling costs they bear. Nonetheless, the thousand-block allocation base provides for a full accounting of cost responsibility for *all* of the numbers under the control of the non-pooling participant, not just those currently being utilized by customers.

Accordingly, we find no inconsistency between the FCC's competitively neutral standards for cost recovery and the use of thousand-number blocks as a cost allocator among carriers.

In order to enable the PA to access the data needed to periodically update carrier billing pro rations for shared pooling costs, therefore, we shall modify D.00-07-052 as follows. We shall require that total thousand-number blocks held by each carrier (rather than numbers utilized by customers) be used to make the billing pro rations. Thus, each carrier's allocation of total shared costs shall be pro rated based upon the number of thousand blocks it holds in the NPA as a percentage of the total thousand-number blocks held by all carriers in the NPA where the pool is being conducted. In the case of those carriers that are not participants in the number pool, their allocation of shared pooling costs shall be based on the total number of NXX codes they hold in the NPA (each NXX counting as ten thousand-number blocks). For those carriers that are

participants in the number pool, their total number blocks used in the calculation shall be the total number of NXX codes in their inventory, plus any thousand blocks they have drawn from the pool, less any thousand blocks they have donated to the pool. With these modifications, it is not necessary for the PA to access any confidential number utilization data.

In order to provide a reasonably up-to-date pro ration of billing costs, we also shall require the PA to update the carrier-specific number block data at regular specified intervals. We did not previously address the issue of updating in the D.00-07-052. We conclude, however, that annual updating of the number block data is reasonable, and shall direct that this requirement take effect one year after the initial reporting date for data used to make the pro ration as ordered in D.00-07-022.

Applying Billing Credits Prospectively

Party's Position

NeuStar already has billed and collected payments from some carriers for the cost of implementing pooling in the 310 NPA. According to the new cost allocation principles adopted in the decision, some carriers will qualify for a billing credit equal to the difference between the amount the carrier was previously billed and the revised amount due based upon the carrier's pro rata share of the assigned numbers. NeuStar requests that the Commission clarify that NeuStar may apply the credit due to each carrier toward future billables incurred by that carrier within three months. NeuStar also asks the Commission to clarify that NeuStar will make no adjustments to the credit if a new service provider subsequently commences service in the NPA.

Discussion

We shall clarify the decision to state that NeuStar may apply the billing credit as an offset toward future billings otherwise due from a carrier within three months of the effective date of today's decision. Permitting NeuStar to apply the billing credit in this manner will yield a more administratively efficient outcome. We shall also clarify that the billing credit only applies to previously billed carriers and is a one-time-only

credit to account for overcharges resulting from the prior method of billing of carriers in effect before D.00-07-022. NeuStar shall make no reallocations to the billing credit due to previously billed carriers if a new service provider subsequently begins service in the NPA subsequent to the effective date of D.00-07-022. The billing credit shall only be applied to those carriers that were billed for pooling costs prior to the effective date of D.00-07-022.

Inclusion of Direct Fees in Carriers' Proportionate Sharing of Contract Costs

Parties' Positions

NeuStar's current practice is to collect certain administrative fees directly from pooling participants (i.e., Direct Fees). NeuStar seeks confirmation from the Commission that Direct Fees are not included in the carrier's proportionate allocation of costs based on each carrier's share of the assigned numbers. NeuStar believes carriers should continue the current practice of paying the Direct Fees in accordance with the current Interim Number Pooling Administration agreements.

WorldCom disagrees with NeuStar, and argues that the Direct Fees charged by NeuStar should be recovered as part of the pro rata allocation assigned to each carrier based upon its share of assigned numbers in the NPA. WorldCom further argues that, it is inefficient to implement a Direct-Fees process when all costs can be more efficiently collected using the recovery process adopted in the Decision. WorldCom further argues that, due to Incumbent Local Exchange Carriers' (ILECs) more abundant number inventories lessening their reliance on pooling, Direct Fees will burden CLECs with higher costs than their ILEC competitors and that such an outcome would be anticompetitive.

Discussion

We conclude that the payments NeuStar currently recovers through Direct Fees charged to specific carriers should be recovered from all carriers on a proportionate basis based upon each carrier's share of thousand-number blocks held in the NPA on the same

basis as other number pooling costs. We agree with WorldCom that assessing separate Direct Fees on carriers will result in a disproportionate burden on CLECs in comparison to ILECs. The use of thousand-number blocks held as a cost allocation basis results in a more competitively neutral means of recovering number pooling costs in accordance with the underlying intent of the Decision. Therefore, we shall clarify the Decision to explicitly require that the PA contract be conformed to the requirement that Direct Fees not be separately charged, but shall be recovered from all carriers on a pro rata basis using thousand-number blocks held as the allocation basis.

Comments on Draft Decision

The draft decision of the ALJ Thomas Pulsifer in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.7 of the Rules and Practice and Procedure. Comments were filed on February 28, 2001. We have taken parties' comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. Certain measures relating to the implementation of the cost recovery process for number pooling as adopted in D.00-07-052 require clarification.
2. In order to compute the requisite information required to bill individual carriers for number pooling administration costs pursuant to D.00-07-052, the NeuStar personnel employed in the capacity of PA would need access to confidential number utilization information that is currently restricted to NeuStar personnel employed in the capacity of number utilization consultant.
3. The currently executed Number Utilization Agreement prohibits NeuStar from disclosing confidential utilization information to any third party without Commission permission.
4. Pro ration of shared costs based on total thousand blocks held by carriers (rather than numbers utilized by customers) would avoid the need to divulge confidential carrier-specific utilization data since the number blocks assigned to each carrier is not confidential, but is publicly available information.

5. By allocating pooling costs based upon thousand-number blocks, each carrier bears an equivalent share of costs in direct proportion to the resources they have drawn from the system, irrespective of specific utilization rates.

6. NeuStar seeks to modify D.00-07-052 to permit carriers' billing credits to be applied toward future billable amounts incurred by carriers within three months.

7. Under the current Pooling Agreements, NeuStar bills certain Direct Fees to carriers rather than prorating such charges based on each carrier's respective share of total thousand-number blocks held.

Conclusions of Law

1. The Petition for Modification of D.00-07-022 filed by NeuStar, Inc. should be granted, in part, as set forth in the ordering paragraphs below.

2. The Petition for Modification of D.00-07-022 filed by NeuStar, Inc. should be denied, in part, to the extent that it seek access to confidential data and to exclude Direct Fees from the calculation of pro rata billings due from each carrier based on its assigned telephone numbers in the NPA subject to the number pool.

3. Instead of ordering release of confidential data, a preferable solution is to modify the adopted numerical formula for the pro rata calculation of number pooling billings to avoid the need for the PA to access any confidential data.

4. A reasonable and competitively neutral allocation of number pooling costs can be accomplished by basing the pro ration on total thousand-number blocks held by each carrier.

5. In order to provide a reasonably up-to-date pro ration of billing costs, annual updating of the number block data used in the calculation is reasonable.

6. It would produce a more competitively neutral outcome for NeuStar to recover all of its pooling administration costs, including those now recovered through Direct Fees, through a pro rata allocation based on thousand-number blocks held by each carrier.

7. D.00-07-022 should be modified as set forth in the ordering paragraphs below.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 00-07-052 is hereby modified as set forth below:

- a. The following shall be added at the end of the second-to-last sentence of Ordering Paragraph (OP) 1.

The pro ration of contract payments for number pooling shall include those that were previously billed to carriers as “Direct Fees.”

- b. OP 2 of D.00-07-022 shall be superseded by the following ordering paragraph:

The Pooling Administrator is authorized to bill each carrier providing service in each NPA subject to pooling for shared contract costs based on the quantity of thousand-number blocks held by each carrier divided by total thousand number blocks held by all carriers in the NPA. For those carriers that are not participants in the number pool, their allocation of shared pooling costs shall be based on the total number of NXX codes they hold in the NPA (each NXX counting as ten thousand-number blocks). For carriers that are participants in the number pool, their total number blocks shall be the total number of NXX codes in their inventory, plus any thousand blocks they have drawn from the pool, less any thousand blocks they have donated to the pool. The pro ration factors used to compute the billing allocation shall be updated annually.

- c. The following shall be added to the end of OP 3:

NeuStar may elect to apply the billing credit toward future billings otherwise due from a carrier within three months of the effective date of this decision. The billing credit shall only be applied to those CLECs that were previously billed for number pooling charges prior to the issuance of D.00-07-052. NeuStar shall make no subsequent adjustments to the credit if a new service provider begins service subsequent to the effective date of D.00-07-052.

2. The Petition for Modification of D.00-07-022 filed by NeuStar, Inc. is granted to the extent set forth in OP 1. In all other respects, the Petition is denied.

This order is effective today.

Dated April 19, 2001, at San Francisco, California.

LORETTA M. LYNCH

President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

Commissioner Henry M. Duque, being
necessarily absent, did not participate.